

REMARKS

Claims 1 - 19 are pending in the application. Concurrently filed herewith is a petition for a three-month extension of the period in which to respond to the Final Office Action dated December 19, 2003, to expire June 21, 2004, as June 19, 2004 is a Saturday.

Applicant's Novel Fence And Method Patentably Distinct From Prior Art

The present invention as recited in independent claims 20, 12, and 19 (amended) clarifies the relationship of the structure of the rails and the pickets in the claimed picket fence panel that readily racks for tracking a sloped grade of a portion of a terrain surface. The fence panel assembles with a first rail and a second rail that are disposed in parallel, spaced-apart relation at an angle relative to horizontal. The rails define a longitudinal length of the fence panel. Each first rail and second rail define respective opposing first longitudinal edge and second longitudinal edge, and these are spaced apart relative to a terrain surface. The opposing edges are important to the structure of the claimed invention. The fence panel includes a pair of spaced-apart end pickets disposed substantially perpendicular to horizontal on a first side of the first rail and the second rail at opposing longitudinal end portions of the first rail and the second rail. The end pickets and the rails attach together by a fastener or a weld between each of the end pickets and the respective first longitudinal edge of the first rail and the second rail. A plurality of interior pickets are disposed substantially perpendicular to horizontal on a first side of the first rail and the second rail. The interior pickets are spaced-apart between the end pickets. The interior pickets attach to the first rail and the second rail by a fastener or weld between each of the interior pickets and the respective opposing second longitudinal edge of the first rail and the second rail.

The end pickets and the interior pickets connected on opposing longitudinal edges of the first rail and the second rail restrict the rails from rolling while the fence panel racks by moving opposing ends of the panel in opposing vertical directions relative to the terrain surface to conform a slope of the first rail and the second rail substantially to a slope of the portion of the terrain surface by changing the angle between the end and inner pickets and the first and second rails while the end and interior pickets remain substantially perpendicular to horizontal.

"Rolling" is caused by the rails moving away from the unwelded side and thereby partially separating from the pickets. The novel structure of the present invention attaches the end pickets to a first edge of the rails and the inner pickets to the opposing edge of the rails. This prevents rolling while the fence panel racks to conform to the sloped terrain.

Hinkle '921 prevents rolling of the rails with openings in the rails that have sides that engage the pickets. This structure is more complicated than that of the fence panel of claims 12 and 20 and the method set forth in claim 19. The annotated figure by the examiner is noted and the undersigned has added annotations. *Hinkle '921* provides openings 24, 27 in the web 22 of the channels that define the bottom rail 15 and top rail 17. Pickets 17 extend through the openings, and the edges of the openings and the side flanges prevent the rails from rolling during racking.

Please note carefully that *Hinkle* secures the first rail with opening and with the welds between the pickets and the lower edge of the first rail. In contrast, the claimed invention sits the picket on the side of the rail (not through an opening) and welds the end picket on the upper edge of the rail and welds the interior pickets on the lower edge of the rail. This structure of the opposing welds keeps the rail from rolling. There is no teaching in *Hinkle* to have opposing welds. Indeed, the welds on the second rail are all on made on the same longitudinal edge relative to that rail.

The present invention as set forth in claims 1, 12, and 19 lacks the structure of the openings in the web for receiving the pickets. The structure of the claimed invention differs from the prior art with the elimination of the openings and the attachment of the pickets to the sides of the spaced-apart rails, but the structure particularly claimed with the inner pickets attached to a first edge of a respective rail and the outer pickets attached to an opposing second edge of the respective rail . The inner pickets thus attach to the rail on a side edge of that rail opposite the side edge to which the outer pickets attach. This structure prevents the rails in the fence panel from rolling during the racking operation and provides a less complicated, more readily constructed fence panel.

Summary

In summary, it is believed that the present amendment responds fully to the issues outstanding in this application and that claims 2 - 20 (amended) are in condition for allowance, and same is earnestly solicited.

The examiner is invited to telephone the undersigned to discuss any questions or issues remaining.

Respectfully submitted,



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welds on opposite ~~sides~~ upper/lower sides of rail.

